TABLE OF CONTENTS

Appendix Page

Amended Judgment in a Civil Case
filed November 10, 2004.....1

Order of
The Honorable Henry Coke Morgan, Jr.
Re: Granting Defendants' Motion for
Judgment as a Matter of Law
Pursuant to Fed. R. Civ. P. 52(c)
filed January 28, 2005.....3

United States District Court

Eastern District of Virginia
Norfolk Division

[FILED November 10, 2004]

Captain Sheriff Saudi,
Plaintiff(s)

v.

Northrop Grumman Corporation, et al,
Defendant(s)

AMENDED JUDGMENT IN A CIVIL CASE
CASE NUMBER: 2:03cv299

[ ] **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[X] **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that motion for judgment of defendants, Northrop Grumman Corporation and Newport News Shipbuilding, Inc., on partial findings pursuant to Rule 52(c) of F.R.Civ.P., is GRANTED.

IT IS FURTHER ORDERED AND ADJUDGED that judgment is entered in favor of

defendants, Northrop Grumman Corporation, Newport News Shipbuilding, Inc., and Newport News Shipbuilding and Drydock Company.

DATE: November 9, 2004

Elizabeth H. Paret, *Clerk*

/s/Sandra L. Dance
(By)Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

[FILED January 28, 2005]

CAPTAIN SHERIFF SAUDI,

PLAINTIFF,

v. **CIVIL NO. : 2:03cv299**

NORTHROP GRUMMAN CORPORATION, *et al*,

DEFENDANTS.

ORDER

On October 12-13, 2004, this Court conducted a bench trial in the above-styled action on Plaintiffs claims for breach of implied warranty of merchantability, strict liability, and negligence. All claims arose from injuries Plaintiff, Captain Sheriff Saudi, allegedly received when a crane transporting him between two vessels in the Gulf of Mexico broke free and fell into the water. At the close of Plaintiff's case, Defendants, Northrop Grumman Corporation ("Northrop Grumman"), Newport News Shipbuilding, Incorporated ("Newport News Shipbuilding"), and Newport News Shipbuilding and

Drydock Company ("Drydock")[1], moved for judgment as a matter of law pursuant to FED. R. CIV. P. 52(c). The purpose of this order is to explain in more detail the rationale of the Court in granting this motion.

I. STANDARD OF REVIEW

Rule 52(c) provides in pertinent part:

> If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue....

And it "is appropriate when, without weighing the credibility of witnesses, there can be but one reasonable conclusion as to the correct judgment. If, however, evidence viewed in a light most favorable to the nonmovant indicates that more than one

---

[1] The prior history of this case can be found at Saudi v. Northrop Grumman Corp., No. 2:03cv299, 2004, U.S. Dist. LEXIS 5970 (E.D. Va. Apr. 6, 2004)(granting a motion by the Keppel defendants, to dismiss Plaintiff's claims against them). In a separate order, the Court granted a motion by Plaintiff to amend his complaint to add Drydock as a party.

conclusion is plausible, judgment as a matter of law is improper." Siegfried Constr., Inc. v. Gulf Ins. Co., 2000 U.S. App. LEXIS 1304 (4th Cir. 2000)(citing Anderson v. Liberty Lobby. Inc., 477 U.S. 242, 250-251 (1986)). Judgments entered pursuant to Rule 52(c) shall be supported by findings of fact and conclusions of law as required by subdivision (a) of the rule.

II. FINDINGS OF FACT AND NON-DISPOSITIVE MOTIONS

A. Findings of Fact.

Based upon the evidence introduced at trial, the Court finds the following facts:

On May 17, 1999, the S/T Marine Atlantic and the American Discovery were both at sea in the Gulf of Mexico.

Plaintiff was on board the S/T Marine Atlantic and sought to move to the American Discovery. At the time, a common method of transportation between vessels involved riding in a crane and basket.

While utilizing this technique, the S/T Marine Atlantic's crane collapsed, the basket in which Plaintiff was riding fell, and pieces of the crane dropped into the water.

Plaintiff jumped from the basket while it fell, but suffered injuries as a result of hitting the water and being struck by descending pieces of the crane.

Plaintiff's injuries were primarily to the left side of his body. He still has tingling in his left little finger; slightly limited left wrist motion; surgical scarring around his left elbow and shoulder; and some limitation of movement of that shoulder.

The ship now known as the S/T Marine Atlantic was fitted with the crane in question in 1979. Between 1979 and the date of the accident, the S/T Marine Atlantic was inactive for a minimum often and a maximum of thirteen years.

During the twenty years following affixation, the crane suffered corrosion, however, no evidence was introduced from which the Court could infer that corrosion was a factor in the collapse. Further, no evidence was introduced from which the Court could conclude why the crane collapsed.

B. Non-Dispositive Motions.

Three rulings of the Court undoubtedly shaped Plaintiffs presentation of his case. Each deserves mention.

1. After making his opening statement, but before calling his first witness, Plaintiff moved the Court to admit two foreign counsel. That Plaintiff's motion was made in the course of an ongoing trial was not its sole irregularity; Plaintiff and foreign counsel also neglected to comply with Local Rule 83.1(D), which requires that any motion for *pro hac vice* admission be made by a member of this Court. UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA LOCAL RULE 83.1(D).

Plaintiff's protestations to the contrary, the Court had previously expressed concern that Plaintiff was receiving assistance from counsel. So, in a published opinion and order, the Court revoked Plaintiffs status as a *pro se* litigant. See Saudi v. Northrop Grumman Corp.. No. 2:03cv299, 2004, U.S. Dist. LEXIS 5970 at **7-8. The foreign counsel who sought to appear *pro hac vice* admitted that they assisted Plaintiff with the preparation of his case, although the exact nature of their assistance and the dates upon which they provided it are unknown. Under these circumstances, the Court declined to waive the requirement that foreign counsel be accompanied by local counsel. Furthermore, the Court prohibited Plaintiff from using trial materials prepared in conjunction with these foreign counsel.

2. Plaintiff sought to call George Moran and Lynn Wyman as expert witnesses. Pretrial, Defendants moved to strike Plaintiff's designation of these witnesses as experts (Doc. 92) and Defendants objected to their being called as witnesses at trial. Plaintiff was required by the FED. R. CIV. P. 16(b) Scheduling Order to designate expert witnesses and make FED. R. CIV. P. 26(a)(2)(B) disclosures to Defendants by July 12, 2004. Although Plaintiff submitted a list designating thirty experts, he failed to make the necessary disclosures in a timely fashion. Defendants moved to strike Plaintiff's designations and argument on this motion was heard on August 4, 2004. Because Plaintiff had not complied with the Rule 16(b) Scheduling Order, and had deprived Defendants of time to prepare for Plaintiff's designees as a result, the Court ordered Plaintiff to identify no more than three experts on

the subject of defective design and provide the necessary disclosures to Defendants by August 12, 2004. (Doc. 84.) The Court imposed no limit on the number of Plaintiff's previously designated medical experts that he could keep. Id. When Plaintiff submitted his revised designations to Defendants, it contained three defective design experts, but two of them, Moran and Wyman, had not been among Plaintiff's previous designations. By adding two additional design witnesses, rather than selecting three from the thirty experts previously designated, Plaintiff once again failed to comply with an order of the Court. Therefore, the Court granted Defendants' motion to strike the designation of Moran and Wyman as experts.

3. At the conclusion of the first day of trial, the Court became aware that Plaintiff sought to introduce materials from a trial stemming from the same incident as gives rise to this case, but in which these Defendants were not parties. Specifically, Plaintiff wanted to admit the deposition and former testimony of Dr. Salah Mahmoud. Dr. Mahmoud was one of Plaintiff's thirty original expert designations and the third of Plaintiff's maximum three defective design experts. Because the Court was concerned about the admissibility of the deposition and former testimony, the Court advised Plaintiff to be prepared, on the following day, to present authority to the Court supporting Plaintiffs theory of admissibility. Rather than heeding the Court's advice, Plaintiff chose not to call Dr. Mahmoud during the second day of trial, opting instead to send Dr. Mahmoud home. As a result, Plaintiff rested his case without introducing any

expert evidence concerning general crane design at the time of manufacture or the design of the particular crane in question.

III. SUFFICIENCY OF PLAINTIFF'S CLAIMS

Negligence and strict liability are established causes of action in admiralty. East River S.S. Corp v. Transamerica Delaval. Inc., 476 U.S. 858, 864-865 (1986)(specifically including negligence, strict liability, and the implied warranty of workmanlike service as parts of maritime law). They are governed by "an amalgam of traditional common-law rules, modifications of those rules, and newly created rules." Id. (citations omitted). On the other hand, the implied warranty of merchantability has not been directly recognized. Id. When such a claim arises in an admiralty context, the court "may look to the common law or to state law, either statutory or decisional, to supply the rule of decision." Princess Cruises, Inc. v. General Elec. Co., 143 F.3d 828, 834 (4th Cir. 1998). Plaintiff did not direct the Court to particular common law or state law that he wished the Court to consider. In contrast, Defendants' Proposed Findings of Fact and Conclusions of Law, as well as its argument on the Rule 52(c) motion, pointed the Court towards Virginia law regarding the implied warranty of merchantability. "Warranty liability under Virginia law for personal injuries caused by defective products is the functional equivalent of strict tort liability under the [*Restatement (Second) of Torts* § 402A (1965)]." Bly v. Otis Elevator Co., 713 F.2d 1040 (4th Cir. 1983)(citing Matthews v. Ford Motor Co., 479 F.2d 399, 401 n.2 (4th Cir. 1973)). Virginia

law treats warranty liability as such because Virginia does not recognize strict liability in tort as "another and separate theory of products liability...." Id. But for the purpose of this admiralty case, where strict liability in tort does exist, the analysis of the implied warranty of merchantability and strict liability should simply be combined. Thus, Defendants could be held liable for the manufacture or sale of a defective product under an implied warranty of merchantability/strict liability theory or a negligence theory. Id. (citations omitted).

A. Implied Warranty of Merchantability / Strict liability.

To make out a prima facie case of implied warranty of merchantability/strict liability, a plaintiff alleging defective manufacture or design must show the following:

> 1) that the goods were unreasonably dangerous either for the use to which they would ordinarily be put or for some other reasonably foreseeable purpose;
>
> 2) that the unreasonably dangerous condition existed when the goods left the defendant's hands; and
>
> 3) that the breach of duty by the manufacturer or seller was the proximate cause of the plaintiffs injuries

Movers v. Corometrics Medical Systems Inc., *et al*, 2000 U.S. App. LEXIS 6177, at *14 (4th Cir.)(unpublished)(citing Logan v. Montgomery Ward & Co., 219 S.E.2d 685, 687 (1975)); Butler v. Navistar Int'l Trasp. Corp., 809 F. Supp. 1202, 1207 (W.D. Va. 1991).

"A product is unreasonably dangerous if it is defective in assembly or manufacture, unreasonably dangerous in design, or unaccompanied by adequate warnings concerning its hazardous properties." Id. (citing Morgen Inds. v. Vaughan, 471 S.E.2d 489, 492 (Va. 1996)). At trial, Plaintiff did not adduce evidence sufficient to make out a *prima facie case* of implied warranty of merchantability/strict liability. In each of his claims, Plaintiff failed to meet both the unreasonable danger and proximate cause elements.

1. Plaintiff alleged that a coupling in the portside hose handling crane was unreasonably dangerous in design. (Pl's Am. Compl. at pp. 6-7.) He asserts that the coupling design did not provide for a method of lubrication or preservation "consistent with standards of the industry prevalent as of ... the year of manufacture." Id. Had the coupling design contained a method of lubrication, Plaintiff theorizes that the coupling would not have corroded and the crane would not have collapsed. As Plaintiff alluded to in his complaint, the reasonableness of a design is judged against the industry and government standards prevailing at the time of manufacture. Bly, 713 F.2d at 1043. Yet Plaintiff introduced no evidence of standards that applied as of the time of the crane's manufacture or any other time. Thus, Plaintiff did not establish that

the coupling design rendered the crane unreasonably dangerous. Even if Plaintiff showed that the design was unreasonably dangerous, Plaintiff failed to prove that the design was the proximate cause of the crane's collapse. "The proximate cause of an event is that act or omission which, in natural and continuous sequence, unbroken by an efficient intervening cause, produces the event, and without which that event would not have occurred." Movers, at *16 (citing Banks v. City of Richmond, 348 S.E.2d 280, 282 (Va. 1986)). Plaintiff introduced no evidence of why the crane fell, much less evidence that a particular piece caused the crane to fall for a specific reason, i.e. corrosion.

2. Plaintiff also alleged that Defendants failed to provide an adequate warning that maintenance of the crane required complete disassembly of the coupling "to perform adequate inspection and lubrication." (Pl's Am. Compl. at p. 7.) A close reading of Plaintiff's complaint reveals the rudiment of his claim: the spline coupling was dangerous because it was difficult to maintain. (Id. at pp. 7-8, ¶ 6.) "A manufacturer may breach its implied warranty of merchantability by failing to warn or instruct concerning dangerous propensities or characteristics of a product even if that product is flawless in design and manufacture." Bly, 713 F.2d at 1045 (citations omitted). Defendants' duty to warn existed as of the time the ship, onto which the crane was affixed, was sold. Butler, 809 F. Supp. at 1207 (duty exists as of time product leaves control of producer). But Plaintiff submitted no evidence of the maintenance the coupling required or how complex it was to perform such maintenance. Therefore, the

Court cannot conclude that Defendants had a specific duty to warn about coupling maintenance. Id. (finding that plaintiff met burden of establishing a warning was necessary by introducing published articles noting a particular danger). Even if Plaintiff showed that Defendants failed to warn that the spline coupling posed specific maintenance challenges, Plaintiff did not prove that deficient maintenance, and subsequent corrosion, of the coupling was the proximate cause of the crane's collapse.

B. Negligence.

The elements of a negligence cause of action alleging defective design or failure to adequately warn are nearly identical to the elements of an implied warranty of merchantability/strict liability cause of action premised on the same claims. See Butler, 809 F. Supp. at 1209; Bly, 713 F.2d at 1045. Under a negligence theory, however, the focus of each claim shifts from the product to the manufacturer. Movers, at *16, n.6. Yet this does not compel a different result in this case.

1. With respect to Plaintiff's defective design allegation, the focus under an implied warranty of merchantability/strict liability analysis was "on the product and its attributes...." Id. Under a negligence analysis, a court must look to the defendant's conduct and determine whether it was reasonable. Id. Plaintiff called two employees of Defendants as witnesses to testify concerning Defendants' conduct during the procurement, manufacture, and affixation of the crane to the ship

prior to sale. David McKercher described a process in which the engineering department would receive a performance specification, draft a requisition, and place an order for a crane destined to be attached to a ship. McKercher's testimony is of limited relevance because he was not employed by Defendants at the time of manufacture of the crane in question and he could not state with certainty whether the process he described was used in 1979. Plaintiff's second witness on the issue, Robert Lea, testified that there was not a specific process in place. Crane procurement was done on a case-by-case basis and, although Lea remembered the crane in question, he did not work on it personally. Simply put, McKercher and Lea presented conflicting accounts of Defendants' conduct during the acquisition and affixation of other cranes, but neither described Defendants' conduct regarding this crane. Thus, Plaintiff did not establish that Defendants' procurement, manufacture, or affixation of the crane to the ship was negligent.

2. With respect to Plaintiff's failure to adequately warn allegation, the focus under an implied warranty of merchantability/strict liability analysis was on "whether the inadequate warnings render the product unreasonably dangerous" at the time of sale. See Movers, at * 16, n.6; Butler, 809 F. Supp. at 1207. Under a negligence analysis, a court looks to the defendant's conduct to determine if it was reasonable. Movers, at *16, n.6. And the defendant's "duty to warn is continuous and not interrupted by manufacture or sale of the product." Id. (citing Bly, 713 F.2d at 1045-1046). As stated in Section IIA(2), Plaintiff submitted no evidence that

Defendants' knew the spline coupling was difficult to maintain. Nor did Plaintiff adduce evidence that Defendants *should have known* this condition. See id. at 1045, n.8 (citing *Restatement (Second) of Torts* § 388 (1977)). Furthermore, Plaintiff failed to produce, in admissible form, the crane manual or other evidence of the warnings made by Defendants. Given that the Court is to focus on the reasonableness of Defendants' actions, Plaintiff's error in this regard was fatal to his claim.

The proximate cause requirement under a negligence theory is identical to that required under an implied warranty of merchantability/strict liability theory. Having failed to establish that the coupling rendered the crane unreasonably dangerous, either because of a defect in design or a failure to warn, Plaintiff's negligence claims do not require the Court to reach the proximate cause element. But even if Plaintiff were able to show that the coupling was unreasonably dangerous, he did not proffer evidence to show that the unreasonable danger produced the crane collapse because he introduced no evidence of why the crane collapsed.

CONCLUSION

For the reasons stated in this Order, the Court **GRANTED** Defendants' Motion for Judgment as a Matter of Law pursuant to FED. R. CIV. P. 52(c)

The Clerk is **REQUESTED** to mail a copy of this Order to all counsel of record. It is so **ORDERED.**

/s/HENRY COKE MORGAN, JR.
HENRY COCKE MORGAN, JR.
SENIOR UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
January /28/, 2005